

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BANQUE SYZ S.A.,

Defendant.

Adv. Pro. No. 11-02149 (CGM)

STIPULATION AND ORDER

Plaintiff Irving H. Picard (the “Trustee”), trustee for the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III (“SIPA”), and the chapter 7 estate of Bernard L. Madoff, and defendant Banque Syz S.A. (“Defendant,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

WHEREAS, on May 20, 2011, the Trustee commenced adversary proceeding number 11-02149 (the “Action”) against Defendant to, among other things, recover transfers allegedly

received from Fairfield Sentry Limited, from Kingate Global Fund Ltd. and Kingate Euro Fund Ltd. (collectively “Kingate”), and from others, pursuant to 11 U.S.C. § 550;

WHEREAS, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014);

WHEREAS, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover transfers allegedly received from Fairfield Sentry Limited (among other transferees) pursuant to 11 U.S.C. § 550 on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

WHEREAS, the Bankruptcy Court ET Decision dismissed the claim against Defendant;

WHEREAS, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

WHEREAS, on August 29, 2019, Defendants filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit’s mandate until the Supreme Court’s final disposition. *See* Petition for Writ of Certiorari, *HSBC Holdings PLC v. Picard*, No. 19-277 (Aug. 29, 2019), 2019 WL 4190391;

WHEREAS, on December 20, 2019, in adversary proceedings that are unrelated to the Action, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. §

158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision denying the Trustee’s motion for leave to file amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision granting, in part, the motion to dismiss the Trustee’s amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the “Good Faith Appeals”);

WHEREAS, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee’s petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25;

WHEREAS, on June 1, 2020, the Supreme Court denied Defendants’ Petition for a Writ of Certiorari concerning the Second Circuit’s ET and Comity Decision. *See Order, HSBC Holdings PLC v. Picard*, No. 19-277 (2020), 2020 WL 2814770;

WHEREAS, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF Doc No. 1582, vacating the judgments of the Bankruptcy Court in connection with the Bankruptcy Court ET Decision and remanding the matters for further proceedings consistent with the ET and Comity Decision;

WHEREAS, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals. *In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the “Good Faith Decision”);

WHEREAS, on October 13, 2021, the Court of Appeals for the Second Circuit issued the mandate in respect of the Good Faith Decision, vacating the District Court’s consolidated good faith decision, *SIPC v. BLMIS*, 516 B.R. 18 (S.D.N.Y. 2014), as well as the Bankruptcy Court’s decisions dismissing *Picard v. Citibank, N.A.*, Adv. Pro. No. 10-05345 (CGM) and *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-05286 (CGM). *See* Mandate, Case No. 20-1333 (2d Cir. Oct. 13, 2021), ECF No. 197; Mandate, Case No. 20-1334 (2d Cir. Oct 13, 2021), ECF No. 187;

WHEREAS, on August 6, 2019, the Court entered an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules of Bankruptcy Procedure approving a settlement agreement (the “Kingate Settlement”) by and among the Trustee and Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (together, the “Kingate Funds”) [ECF No. 417 in Adv. Pro. No. 09-01161 (CGM)];

WHEREAS, the Kingate Settlement was a full and final settlement in satisfaction of the Trustee’s claims against the Kingate Funds. [ECF No. 413-2 in Adv. Pro. No. 09-01161 (CGM)]. The release granted by the Trustee in the Kingate Settlement extended to the Kingate Funds’ shareholders to the extent that any such shareholders, like Defendant, received transfers of money from the Kingate Funds but did not include a release of claims that the Trustee may bring that are unrelated to the Kingate Funds’ investments in or withdrawals from BLMIS. *Id.*; and;

IT IS HEREBY STIPULATED AND AGREED, that, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure (“FRCP”), as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, the Trustee amends his Complaint in the Action to dismiss without prejudice any claim to recover the Kingate Subsequent Transfers (as defined in the Complaint).

Specifically, the Trustee's claims that Defendant received the Kingate Global Subsequent Transfers totaling approximately \$39,975,488, and Defendant received the Kingate Euro Subsequent Transfers totaling approximately \$17,376,966, each as defined in the Complaint, are hereby dismissed without prejudice;

IT IS FURTHER STIPULATED AND AGREED, that except as set forth herein, this Stipulation has no effect on any other claims in the Complaint;

IT IS FURTHER STIPULATED AND AGREED, that this Stipulation is without prejudice to (1) the Trustee's right to seek leave to amend the Complaint pursuant to FRCP Rule 15(a)(2) to assert claims to avoid and/or recover any additional or other transfers to Defendant, as may be determined through the Trustee's continuing investigation and through discovery and (2) Defendant's or any proposed additional defendants' rights to oppose any such amendment(s) and/or defend against such claim(s).

IT IS FURTHER STIPULATED AND AGREED, that the deadline for the Defendant to respond to the complaint in the Action shall be January 28, 2022. If Defendant files a motion to dismiss the complaint, such motion shall set forth any and all grounds for dismissal at the pleading stage. The deadline for the Trustee to respond to the motion shall be March 29, 2022, and the deadline for the Defendant to file a reply shall be April 28, 2022.

IT IS FURTHER STIPULATED AND AGREED, that the pre-trial conference scheduled for December 15, 2021, *see* ECF No. 146, shall be adjourned to a date to be determined after the Defendant answers or the motion to dismiss briefing is completed, whichever occurs first.

IT IS HEREBY STIPULATED AND AGREED, that if Defendant files a motion to dismiss the complaint, then the parties shall request oral argument on the motion at the Court's first available convenience.

Dated: December 6, 2021
New York, New York

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Liquidation of Bernard L. Madoff
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Attorneys for Defendant Banque Syz S.A.

SO ORDERED.

Dated: December 7, 2021
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
Chief U.S. Bankruptcy Judge